

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

G. LOOMIS, INC.,

Plaintiff,

v.

GARY A. LOOMIS, et al.,

Defendant.

Case No. 3:09-cv-05236-BHS

**DECLARATION OF ANNETTE L.
HURST IN SUPPORT OF MOTION TO
WITHDRAW AS COUNSEL AND
CERTIFICATION RE NOTICE TO
CORPORATION RE POTENTIAL
EFFECTS OF WITHDRAWAL**

1. I, Annette L. Hurst, declare as follows:

2. I am a partner with the law firm of Orrick, Herrington & Sutcliffe admitted to practice before the Bar of the State of California and numerous federal district courts and courts of appeals throughout the United States. I have previously been admitted *pro hac vice* to practice before this Court in another matter. Because of the circumstances described below, I have not sought admission to this Court *pro hac vice* in connection with this matter, and instead file this declaration in support of Orrick's motion to withdraw as counsel. Everything stated herein is true and correct of my own personal knowledge except where stated as to information and belief, and as to those matters I believe them to be true. I could and would testify competently to the contents hereof if called upon to do so by the Court.

3. I was previously a shareholder with Heller Ehrman LLP prior to its unexpected and

HURST DECLARATION IN SUPPORT OF
MOTION TO WITHDRAW

1 untimely dissolution in September 2008. Prior to the dissolution, I am informed by my partner
2 Beth Goldman, a trademark prosecution attorney, that Mr. Geoffrey Goetz of Loomis Outdoors
3 Holdings, Inc. contacted her and sought to have Heller retained to advise it and Gary Loomis
4 regarding certain trademark matters. After we moved to Orrick in the wake of Heller's dissolution,
5 G. Loomis, Inc. sent cease and desist correspondence to Loomis Outdoors. Ms. Goldman sought
6 my involvement in discussing this new potential litigation matter with Mr. Goetz, and at his
7 direction we assumed the representation. Mr. Goetz told us he was the President of Loomis
8 Outdoors. I did not, and I am informed that Ms. Goldman did not, confirm the precise corporate
9 name of the company at that time as it was reflected on the rolls of the Secretary of State of the
10 State of Washington.

11 4. On or about October 30, 2008, G. Loomis, Inc. filed its initial Complaint in this
12 action in the United States District Court for the Central District of California, naming Gary
13 Loomis, Loomis/Borger Outdoors Holding, Inc., Targus Fly & Feather, Inc. ("Targus") and
14 Loomis Outdoors, Inc. as defendants. At Mr. Goetz and Mr. Loomis's instruction, Orrick
15 undertook to represent all of these defendants other than Targus. Mr. Goetz and Mr. Loomis
16 informed us that Mr. Goetz would handle the matter on a daily basis and would generally provide
17 us with the required instructions. They informed us that they believed Loomis/Borger was a
18 nonexistent entity and that there was only a single Loomis Outdoors entity. On November 4,
19 2008, Mr. Goetz instructed us in writing that we were authorized to accept service on behalf of
20 Loomis Outdoors, Loomis/Borger and Gary Loomis. I am informed by Ms. Goldman that on or
21 about November 11, 2008, Ms. Goldman sent two engagement letters for this new litigation
22 matter, one addressed to Mr. Goetz for the corporate entities, and one addressed to Mr. Loomis in
23 his individual capacity, both sent care of Loomis Outdoors. The engagement letters provided,
24 amongst other things, that the clients would pay Orrick our hourly rates for legal services
25 rendered.

26 5. Thereafter, Orrick undertook to investigate the matter and act as defense counsel
27 for the referenced entities. I signed waivers of service for the clients whom we were authorized to
28 represent. We met and conferred with Plaintiff's counsel about defects in the Complaint. On or

1 about December 8, 2008, we received a copy of the First Amended Complaint filed by Plaintiff in
2 the action, adding two new defendants, Gary Loomis, Inc. and LBS Financial Services, LLC.
3 After discussions with our then-current clients and LBS, we agreed to represent new defendant
4 Gary Loomis, Inc. but not LBS Financial Services, LLC, and informed Plaintiff's counsel that we
5 would accept service for Gary Loomis, Inc. Various additional conferences with Plaintiff's
6 counsel occurred, and ultimately the parties engaged in the motion practice that resulted in a
7 successful motion to transfer the action to this Court.

8 6. In the meantime, however, in or about January 2009, we became aware that
9 disputes had arisen amongst the various defendants whom we represented. We were not involved
10 in these disputes but learned of them when Geoff Goetz informed us that he was resigning as
11 President of Loomis Outdoors. At that time, he instructed us that we should take further
12 instruction on behalf of Loomis Outdoors from Lowell Hancher, Jr. ("Bob Hancher") and Burl
13 Outlaw. He provided us with phone numbers and e-mail addresses for each of them, and a mailing
14 address for Mr. Hancher. He also informed us that Mr. Outlaw did not have a mailing address
15 because Mr. Outlaw lived in a recreational vehicle, traveling from place to place at his
16 convenience.

17 7. In light of the disagreements that had arisen amongst the various defendants we
18 represented, we held telephone conferences with Messrs. Outlaw, Hancher and Loomis, together
19 and separately, to confirm whether all of the defendants we were then representing could and
20 should continue to be represented by us. At that time we also investigated and learned for the first
21 time that apparently neither Mr. Goetz nor Mr. Loomis had ever sent back the signed engagement
22 agreements. Mr. Loomis then retained separate "shadow" counsel, and we informed his separate
23 counsel of the situation. All parties expressly agreed that we should continue representing them
24 through the period contemplated by the motion practice seeking a transfer to this Court, and that
25 we would reevaluate the conflicts situation at that time. In each telephone conference regarding
26 the conflicts issues, Mr. Outlaw, Mr. Hancher and Mr. Loomis also promised that Loomis
27 Outdoors and Mr. Loomis would pay Orrick its fees for the entire representation. From that point
28 forward, Mr. Gary Loomis gave us instructions on behalf of Gary Loomis and Gary Loomis, Inc.

1 Messrs. Outlaw and Hancher began giving us instructions regarding Loomis Outdoors. All of
2 them communicated with us by e-mail and telephone.

3 8. On February 11, 2009, I had a further conversation with Mr. Burl Outlaw in which
4 he again consented to the continued joint representation and promised that Loomis Outdoors
5 would pay all outstanding Orrick invoices within two weeks. I confirmed this conversation in a
6 writing.

7 9. On April 22, 2009, the Central District issues its order transferring the case to this
8 Court. I transmitted the order to Messrs. Outlaw, Hancher and Loomis by e-mail and received
9 confirmation that they had received it.

10 10. After the transfer, the issue of conflicts and non-payment again arose, as Orrick still
11 had not been paid for its invoices, despite the promises of all of the clients whom we represented.
12 On April 27, 2009, I informed Messrs. Loomis, Outlaw and Hancher that the case had been
13 transferred and a new case file opened in Tacoma by the United States District Court for the
14 Western District of Washington, with Judge Benjamin Settle assigned to hear the matter. I asked
15 them to inform us whether it was appropriate to continue representing the entire group in light of
16 the conflicts that had arisen amongst them, and also demanded payment of our outstanding fees
17 and costs. I informed them that we "must get this resolved this week." On April 28, 2009, we
18 learned that Plaintiff would be filing a further amended pleading. Our clients did not respond by
19 the requested deadline as to whether we should continue a joint representation or when we would
20 be paid. On May 6, 2009, Mr. Hancher again promised at least partial payment of our outstanding
21 invoices on behalf of Loomis Outdoors.

22 11. On May 6, 2009 I sent an e-mail to Messrs. Loomis, Hancher and Outlaw using the
23 e-mail addresses with which I had previously communicated successfully with them on numerous
24 occasions. In the e-mail I set forth the history with respect to the conflicts and non-payment
25 issues. I stated that "we are preparing a motion to withdraw that will specify two grounds for
26 seeking withdrawal: (1) nonpayment; and (2) conflicts amongst the defendant group preventing
27 our continued representation of all parties. We expect that motion to be heard on 7-days notice
28 once it is filed, and we do not expect Plaintiff to oppose it." Additionally, I stated in the e-mail

1 that, "[p]ursuant to California and Washington law, we hereby notify you that none of the entity
2 defendants will be able to represent themselves in Court, but instead must be represented by
3 licensed attorneys authorized to practice in the jurisdiction. If these entities fail to obtain
4 replacement counsel by the date the withdrawal becomes effective, a default may be taken against
5 them and may ultimately result in the entry of judgment against them on the terms sought by G.
6 Loomis." The same day, G. Loomis, Inc. filed its motion to amend, and I forwarded the motion to
7 Messrs. Outlaw, Hancher and Loomis using the e-mail addresses with which I had customarily
8 corresponded with them.

9 11. After sending the May 6 e-mails, I sent several more asking whether defendants
10 had obtained new counsel and reiterating that Orrick would seek to withdraw. Throughout this
11 period, I am informed that my partner Beth Goldman also placed several telephone calls to Bob
12 Hancher which were not returned. On May 11, I informed Messrs. Lowell and Hancher that I
13 believed Mr. Loomis had lined up new counsel who would be representing him in the case, and I
14 again asked them whether they had identified new counsel or "should we proceed with a motion to
15 withdraw." On May 11 I received an e-mail in response from Mr. Hancher saying, "i [sic] will
16 determine the answer and notify you today." No further response was forthcoming from Mr.
17 Hancher, and this was the last communication we have received from either Messrs. Outlaw or
18 Hancher, despite have tried to reach them repeatedly by e-mail and by telephone. On May 19, I
19 forwarded the Second Amended Complaint to Messrs Outlaw, Hancher and Loomis, as well as
20 Mr. Rheume of Davis Wright & Tremaine (whom I had by then been informed would substitute
21 in for Mr. Loomis and Gary Loomis, Inc.) with a cover e-mail stating, "the clock is now ticking
22 for a response to the Second Amended Complaint. I believe we have nearly finalized substitution
23 papers for Gary Loomis. Burl and Bob, we are not going to do this work without getting paid, so I
24 plan to file a motion to withdraw shortly."

25 12. As of May 22, 2009, Mr. Rheume of the Davis, Wright & Tremaine firm has now
26 appeared and substituted in the case on behalf of Gary Loomis and Gary Loomis, Inc. On or about
27 May 29, 2009, I learned that Jim Holland of Hall and Holland was representing Loomis Outdoors
28 in its dispute with Gary Loomis. I inquired of him whether he intended to represent Loomis

1 Outdoors in this matter, and he informed me that he did not in an e-mail that he copied to Messrs.
2 Outlaw and Hancher. I replied to all of them and again asked "Burl & Bob: do you have new
3 counsel or should I file this motion to withdraw?"

4 13. On June 12, 2009, I wrote an e-mail to Neil Erickson on behalf of Plaintiff, and
5 Warren Rheaume on behalf of Mr. Loomis and Gary Loomis, Inc., explaining to them that we
6 intended to move to withdraw from representation of "Loomis Borger Outdoors, Inc. dba Loomis
7 Outdoors, Inc. on grounds of non-payment, conflicts of interest that arose amongst our entire
8 group of former clients preventing further representation of them, and failure to communicate with
9 us." I asked whether they had any objection to the motion.

10 14. On June 15, 2009, Mr. Erickson responded that he had no objection but that he
11 would seek to take a default. I responded and asked him to delay doing so since we were acting
12 under a disability due to conflict of interest, and that it would make no sense if new counsel
13 appeared in response to the motion to withdraw.

14 15. Orrick issued monthly invoices in this matter setting forth all fees and costs
15 actually and reasonably incurred. Invoices were issued on the following dates: December 15,
16 2008, January 27, 2009, February 13, 2009, March 13, 2009, April 16, 2009, May 15, 2009 and
17 June 12, 2009. Only \$420 has been paid of the invoices issued for services rendered in this matter.
18 Orrick is presently owed \$133,671.80 in fees, and \$7,903.93 in costs. Nearly all of these sums is
19 long overdue, and Orrick at present has no reasonable expectation of payment absent legal action
20 against its former clients.

21 I declare under penalty of perjury that the foregoing is true and correct and that this
22 declaration was hereby executed on June 16, 2009 at San Francisco, California.

23
24
25 By 
26 Annette L. Hurst (CA Bar 148738)
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